

*REMARKS/ARGUMENTS**Restriction Requirement*

The Office alleges that the application is directed to more than one separately patentable invention, and requires restriction of the invention to one of Groups I-V. If one of Groups II or V is elected, the Office also requires a species election.

Elections with Traverse

Applicants elect, with traverse, the claims of Group I (i.e., claims 5-12) for further prosecution.

Although the Office does not require an election of species if the claims of Group I are elected, the Office refers to claims 9 and 11 in the species election that is required should Applicants elect the claims of Group II. Since claims 9 and 11 fall within the claims of Group I, it is unclear whether the species requirement was intended for the claims of Group I or Group II. Therefore, as a precaution, Applicants elect, with traverse, a viral antigen from among the antigens listed in claim 11. Claims 5-12 are generic to (i.e., encompass) the elected species.

While Applicants have provided an election for the aforementioned specific species, the species election merely is intended to aid the Examiner in the search and examination of the present patent application. The election is by no means indicative of Applicants' willingness to ultimately limit the claims of the present application to this species. As acknowledged in the Office Action, and consistent with an election of species requirement, Applicants are entitled to consideration of additional species encompassed by the generic claims upon a determination that the elected species is patentable.

Discussion of the Restriction Requirement

There are two criteria for a proper requirement for restriction between patentably distinct inventions: (i) the inventions must be independent or distinct as claimed, and (ii) there must be a serious burden on the examiner in the absence of restriction. M.P.E.P. § 803. Consequently, as set forth in M.P.E.P. § 803: "If the search and examination of all the claims

in an entire application can be made without serious burden, the examiner must examine them on the merits, even though they includes claims to independent or distinct inventions.”

In the case at hand, the Office has failed to meet the criteria for a proper restriction requirement and election of species. For example, the claims of Group I and II encompass the administration of IL-21 or an agonist thereof. Thus, the search for any one of these groups would likely uncover references that would be considered by the Office during the examination of the claims in the other group. This does not mean that the claims necessarily stand and fall together, but simply that the potential relevance of a reference uncovered in one search for all groups mitigates against a restriction requirement.

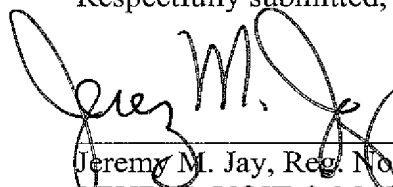
Similarly, the search for a particular species from among viral antigens, bacterial antigens, and parasite antigens (Group II) or JAK1, JAK3, STAT5A, and STAT5B (Group V) likely would uncover references that would be considered by the Office during the examination of the other species within the group. Moreover, Applicants assert that the species requirement is improper because “the examiner, in order to establish reasons for insisting upon restriction, must explain why there would be a serious burden on the examiner if restriction is not required ... [and] must show by appropriate explanation one of the following: (1) separate classification thereof ... (2) a separate status in the art when they are classifiable together ... (3) a different field of search.” M.P.E.P. § 808.02. Here, the Office has failed to show by appropriate explanation any separate classification, separate status in the art when classifiable together, or a different field of search for the species. “Where ... the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among independent or related inventions.” M.P.E.P. § 808.02.

Therefore, Applicants submit that the requirements for restriction and species election are not proper. Accordingly, Applicants request the withdrawal of the requirements and examination of all of the pending claims, or at the very least, the examination of the claims of Groups I and II.

Conclusion

Applicants respectfully submit that the patent application is in condition for allowance. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,



Jeremy M. Jay, Reg. No. 33,587

LEYDIG, VOIT & MAYER

700 Thirteenth Street, N.W., Suite 300

Washington, DC 20005-3960

(202) 737-6770 (telephone)

(202) 737-6776 (facsimile)

Date:

2 May 2007